Mead Corporation d/b/a Escanaba Paper Company *and* United Paperworkers International Union and its Locals 110 and 209 *and* International Brotherhood of Electrical Workers Local 979. Cases 30–CA–11132, 30–CA–11132–2, 30–CA–11132–3, 30–CA–11132–4, and 30–CA–11132–5

August 17, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS, DEVANEY, BROWNING, AND COHEN

On August 12, 1992, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

We agree with the judge, for the reasons stated by him, that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from displaying buttons, T-shirts, and other items with messages pertaining to activities protected by Section 7 of the Act and by promulgating and maintaining progressive discipline for violating the prohibition. The Respondent argues that ''special circumstances'' existed at its facility that outweighed the employees' statutory rights and that, by agreeing to the contract, the Unions waived the employees' Section 7 rights to protest its provisions. We find these arguments to be without merit. Specifically, we find no evidence that the Unions waived the employees' rights to express their concerns respecting terms of the collective-bargaining agreement or other conditions of employment, and we further find no evidence that the display of the messages at issue here caused or threatened to cause any harm to the Respondent's operations.

The facts, as discussed in greater detail by the judge, follow. The Respondent operates a papermill. Its production and maintenance employees have virtually no contact with the general public and little contact with the Respondent's customers and suppliers. In late March 1989, the Respondent began negotiations with the Charging Parties for a successor agreement covering the production and maintenance employees. Included in the Respondent's proposals were two job flexibility programs (Flex-I and Flex-II), which required employees to assume new duties or encouraged them to learn different crafts for extra pay. Specifically, the Flex-I proposal provided hourly wage increases to production and maintenance employees for performing, respectively, minor maintenance and repair, and additional maintenance duties. The Flex-II proposal provided craftpersons who volunteered extra pay for each additional craft in which they qualified. The Charging Parties opposed the flexibility programs, especially the voluntary Flex-II program, as possible encroachments on unit work. In June 1989, employees began wearing buttons to pressure the Respondent into a favorable agreement, stating, e.g., ''Just say NO—MEAD'' and ''Hey Mead—Flex this.''[2] In November 1989, the Unions reluctantly ratified the contract after the Respondent declared impasse and unilaterally implemented the Flex programs. To show their displeasure with the unilateral implementation, the employees wore buttons, T-shirts, hats, and pins with various slogans relating to the contract negotiations and other concerns, e.g., ''Remember' 89,'' and ''No Scab'' buttons, some of the latter with ''Flex II'' taped across them.

In June 1990,[3] the Respondent began recruiting employees for Flex-II, and in September the program began functioning. On September 27-28, the Respondent notified the Unions that it was prohibiting ''no scab'' buttons in the plant, on the ground that the buttons called Flex-II participants scabs. The Unions assured the Respondent that ''scab'' referred to striker replacements elsewhere. Unconvinced, the Respondent on October 2 prohibited the display of messages meeting any of the following descriptions: ''(1) [w]hen the message conveyed is disrespectful and limits our ability to maintain discipline; (2) [w]hen the message is aimed at keeping the wounds of 1989 negotiations open''; and (3) ''[w]hen the message leaves a negative impression on outsiders, particularly our customers/-suppliers.'' On October 12, the Respondent instituted a system of progressive discipline, including discharge, for violating the October 2 restrictions. The system took effect on October 15.

The Respondent contended, and continues to contend in its exceptions, that the sight of the pins and T-shirts had disturbed some visitors to the plant and discouraged participation in the Flex-II program; that the Unions waived the employees' right to protest the contract's terms; that the messages contributed to a hostile atmosphere in the plant and between management and the employees; and that vandalism at the plant was attributable to the slogans. In addition, the Respondent

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In addition, the Unions' negotiator and some employees wore ''no scab'' buttons during negotiations. The evidence showed that the ''no scab'' pins were worn at that time to show solidarity with permanently replaced strikers against other employers.

[3] Unless otherwise noted, all subsequent dates are in 1990.

maintained that the ban also served its legitimate interests in discouraging the perpetuation of labor unrest, maintaining discipline in the workplace, and preventing the public from receiving negative impressions of the Respondent.

The judge found that Section 7 of the Act protected all the messages displayed by the employees at issue here because the messages were directed at encouraging solidarity both with respect to the Respondent's bargaining tactics and to the unpopular agreement, especially its Flex provisions. As to the ''no scab'' buttons, the judge found that they had two purposes protected by Section 7 of the Act: to express solidarity with replaced strikers at other employers, and to discourage employees from participating in the Flex-II program, thus supporting employees' mutual aid and protection. The judge also found that the Respondent had not met its burden of demonstrating ''special circumstances'' that outweighed the employees' Section 7 rights.[4] He rejected as speculative the Respondent's argument that the messages were a threat to plant discipline, noting that the record contained no evidence that vandalism in the plant was connected with the slogans; that the vandalism involved only scattered incidents with minor effects; and that it had also occurred before the events at issue. The judge found further that the mere possibility that these messages might make a negative impression on customers and suppliers did not outweigh the employees' Section 7 right to wear the items.[5] Finally, the judge found no evidence that the wearing of these messages affected discipline, safety, or production.

We agree with the judge that the employees' display of the items at issue was protected by Section 7, that the manner of exercising the rights did not forfeit the statute's protections, and that the Respondent failed to demonstrate that ''special circumstances,'' such as violence, interference with training or production, or threats thereof, caused the Respondent's interests in plant discipline to outweigh the employees' rights.[6] Nor do we find that the employees' right to protest working conditions was affected by the signing of a collective-bargaining agreement. See, e.g., *Midstate Telephone Corp.*,[7] in which the Board reversed the judge's finding that employees' wearing a T-shirt bearing a cracked company logo referring to negotiations and a strike served no legitimate function after the parties had reached a contract. The Board found ''no basis to conclude that this legitimate employee interest in solidarity ceased at some indeterminate period following the conclusion of the strike and the execution of a collective-bargaining agreement.''[8]

We also agree with the judge that the prohibition of insignia relating to the voluntary Flex-II program violated Section 8(a)(1). The Respondent contends that, by agreeing to the collective-bargaining agreement, the Unions waived the employees' Section 7 right to protest the Flex programs openly. We find no evidence that the Unions as agents of the employees waived rights to comment negatively on the contract's provisions. We note that the party asserting that a union has waived employee rights in a collective-bargaining agreement must produce ''clear and unmistakable evidence'' to support such a waiver.[9] The record contains no evidence of any contract provision covering the wearing of insignia, pins, or other paraphernalia. Thus, we find no clear and unequivocal agreement by the Unions to waive the employees' statutory right to wear emblems that support their collective concerns respecting terms and conditions of employment.

Further, we note that the Flex-II program proposed and implemented by the Respondent was wholly voluntary. Under Flex-II, craftpersons who volunteered were entitled to an hourly pay increase for those additional crafts for which they qualified. Having instituted the purely voluntary Flex-II program, the Respondent cannot thereafter complain—in the absence of a specific contractual waiver—if its employees concertedly oppose that program.

[4] *Government Employees*, 278 NLRB 378, 385 (1986) (''[S]ubstantial evidence of special circumstances, such as interference with production or safety, is required before an employer may prohibit the wearing of union insignia, and the burden of establishing those circumstances rests on the employer'' (citations omitted).)

[5] As noted above, the Respondent's employees have limited contact with its suppliers and customers. Under these circumstances, we agree with the judge that the mere possibility that the Respondent's employees may come into contact with a customer or supplier does not outweigh the employees' Sec. 7 right to wear these emblems. See *Sears, Roebuck & Co.*, 305 NLRB 193, 198–199 (1991).

[6] See *United Parcel Service*, 234 NLRB 223 (1978); *Eckerd's Market*, 183 NLRB 337–338 (1970); *Southwestern Bell Telephone Co.*, 276 NLRB 1053 fn. 2 (1985).

[7] 262 NLRB 1291 (1982), enf. denied 706 F.2d 401 (2d Cir. 1983). We note that the court's reversal of the Board's finding that the buttons were protected was based on facts distinguishable from those in the instant case. In *Midstate*, the court found that the employees had significant contact with the public and that, although the logos were not disparaging in the usual sense, ''this public utility, which constantly dealt with the public, had a legitimate concern that the T-shirts might improperly suggest to the public that the Company was in some way coming apart.'' 706 F.2d at 404. Here, the employees have virtually no contact with the public; the slogans do not disparage the Respondent's product or intimate that the Respondent is in danger; they merely express opinions respecting the Respondent's negotiating strategies and the resulting agreement. See also *Southern California Edison Co.*, 274 NLRB 1121 fn. 2 (1985). As in *Southern California Edison*, the messages here were cryptic and their meaning would not have been apparent to a visitor to the plant or to a member of the public who might see the buttons, etc. by chance. Thus, there is no danger here of injury to the Respondent in the eyes of the public, and we emphasize that concerns relating to the public's response to union items are not at issue here.

[8] *Midstate Telephone*, supra at 262 NLRB 1291.

[9] See *Hertz Rent-A-Car*, 297 NLRB 363, 368 (1989); *Albertsons, Inc.*, 300 NLRB 1013, 1016–1017 (1990).

The burden of showing special circumstances does not necessarily require an employer to wait for actual violence to occur.[10] Rather, we weigh the employees' right to engage in Section 7 related activities against the Respondent's rights to maintain discipline and production. Thus, for example, if there are threats of misconduct, an employer could take steps against the specific persons who uttered the threats. But where, as here, there are no such threats, the Respondent cannot implement broad restrictions which interfere with the Section 7 rights of the employees.

The Board's observation in *Kimble Glass Co.*[11] is applicable to the circumstances here:

> Instead of taking appropriate measures against the employees who threatened violence . . . the Respondent took the course of least resistance and adopted the no-badge rule to the detriment of fellow employees seeking to exercise their legitimate rights.

Indeed, in this case, the Respondent's action is even less justifiable than the action taken by the employer in *Kimble*. Here, not only is there no evidence that the Respondent sought to discipline the perpetrators of any violent or disruptive acts or threats thereof, there is no evidence that such conduct or threats occurred.[12]

As noted above, the Respondent has failed to demonstrate that any actual harm occurred or that any employees actually engaged in or threatened to engage in misconduct related to the display of the messages. The Respondent's argument that displaying the items might prolong ill feelings and worsen labor relations is not supported by the evidence. The record fails to reveal any showing of significant production breakdowns or disciplinary problems in or around the Respondent's facility as a result of the display of opposition to the Respondent's bargaining tactics, the terms of the agreement, or opposition to the Flex-II program. In fact, the record shows that beginning in June, the Respondent's production, which had dipped earlier in the year, improved so much that it instituted its gainsharing program.[13]

With respect to the evidence of vandalism, the Respondent has failed to establish any link between the incidents it cites and the items' messages. The Respondent's evidence generally consists of unsupported subjective impressions. Its limited objective evidence that ill-feeling had resulted in misconduct is of questionable reliability. As the judge noted, one of the Respondent's exhibits, the word ''scab'' that was spray-painted on a locker, predated the contract negotiations and the wearing of the insignia at issue here by several years. Further, the locker belonged to a supervisor. In addition, employees testified that such conduct as knocking over toolboxes and putting glue in locks had occurred for some time before the Flex programs were proposed.

The Respondent has also failed to show that the display of items referring to the controversy over the Flex-II program or the ''wounds'' from the negotiations were likely to result in discord or bitterness among employees which might endanger plant discipline, safety, or production. Initially, we note that despite some employees' expression of opposition to Flex-II, numerous employees volunteered for the program; in fact, the record shows that 25 percent of the employees represented by the Paperworkers and 80 percent of those represented by the IBEW had signed up for the program by the time of the ban. We note

[10] We reject the Respondent's reliance on some appellate court decisions involving facts critically distinguishable from those in this case. Thus, *Fabri-Tek Inc. v. NLRB*, 352 F.2d 577 (8th Cir. 1965), concerned a ban specifically tailored to buttons that tended to distract employees who needed extraordinary concentration to manufacture memory chips. In *Virginia Electric & Power Co. v. NLRB*, 703 F.2d 79 (4th Cir. 1983), the court dealt with an employer's stated preference to an employee that the employee not wear a large, brightly colored, and potentially provocative button while on duty at the switchboard in a public lobby where all employees and the public entered the employer's building. In finding the button unprotected, the court emphasized the possibility of a *public* conflict between union and antiunion supporters as well as with rival unions. Unlike the broad ban here, the court noted there that the employer's comment was limited to one specific button. In *Borman's Inc. v. NLRB*, 676 F.2d 1138 (6th Cir. 1982), the court found a T-shirt with the slogan ''I'm tired of bustin' my ass'' unprotected. The court focused on its findings that wearing the T-shirt was an isolated event and the slogan had no connection to any Sec. 7 rights. *Maryland Drydock v. NLRB*, 183 F.2d 538 (4th Cir. 1950), involved a ban on literature the court found insulting and defamatory because it involved a direct attack on the employer, depicting its president as a ''vulture.'' No such personal or defamatory attacks are involved here. But see *Caterpillar Tractor Co. v. NLRB*, 230 F.2d 357 (7th Cir. 1956), which dealt with a ban on buttons reading ''Don't be a scab.'' The court relied, in part, on the high degree of animosity that the term ''scab'' would arouse. The Board has never adopted the view that the word ''scab'' is inherently disruptive, and other circuit courts have agreed with the Board. See, e.g., *Coors Container Co.*, 238 NLRB 1312 (1978), enfd. 628 F.2d 1283 (10th Cir. 1980).

[11] 113 NLRB 577, 579 (1955), enfd. 230 F.2d 484 (6th Cir. 1956) (Board found that a ban on wearing union insignia on company property violated Sec. 8(a)(1)).

[12] The Respondent was aware even before the start of bargaining that the employees opposed such flex programs, as an earlier program had been discontinued. The Respondent was also aware of the unpopularity of the Flex proposals throughout the negotiating period, as employees began wearing insignia expressing opposition to the Flex programs during bargaining. The Respondent did not seek the Unions' agreement to a contract provision providing that the Unions institutionally would refrain from participating in, or encouraging their members to participate in, protests of the terms of the bargaining agreement. Instead, the Respondent bypassed negotiations to prohibit the exercise of a fundamental employee right.

Although issues such as the display of buttons, etc., could have been raised in bargaining, we do not find that the parties were obligated to come to agreement over this or any other issue. Compare *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970).

[13] Under the gainsharing program, the Respondent pays to its employees up to 5 percent of their W-2 income each quarter if productivity, quality, and cost effectiveness warrant such a payment.

further that some of the employees participating in the Flex-II program also wore ''no scab'' buttons prior to their ban.[14]

As a practical matter, then, the Respondent has introduced no evidence that the ''scab'' buttons or any other insignia prohibited by its October 2, 1990 ban interfered with or hampered the implementation of the Flex-II program, hindered production, caused disciplinary problems in the plant, or had any other consequences that would constitute special circumstances under settled precedent. Thus, we adopt the judge's findings and recommended Order as modified below.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mead Corporation d/b/a Escanaba Paper Company, Escanaba, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed the by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT prohibit you from wearing or displaying ''no scab'' buttons, T-shirts, other articles of clothing, decals or other items which carry messages pertaining to employees' exercise of activities protected under Section 7 of the Act.

WE WILL NOT promulgate and maintain progressive discipline leading to termination for violation of rules which prohibit you from exercising activities protected under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

MEAD PAPER COMPANY D/B/A ESCANABA PAPER COMPANY

Joseph A. Barker, Esq., for the General Counsel.
Robert J. Brown, Esq. (Thompson, Hine & Flory), of Dayton, Ohio, for the Respondent.
Richard La Cosse, International Representative, of Pittsburgh, Pennsylvania, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Escanaba, Michigan, on November 5, 1991. Upon a charge filed by United Paperworkers International Union and its Locals 110 and 209 (referred to below, respectively, as Local 110 and Local 209), in Case 30–CA–11132 on October 3, 1990,[1] charges filed by International Brotherhood of Electrical Workers Local 979 (Local 979) in Cases 30–CA–11132–2 and 30–CA–11132–3 on October 11 and 23, respectively, and on charges filed by Local 110 and Local 209, respectively, in Cases 30–CA–11132–4 and 30–CA–11132–5, on October 23, the Regional Director of the National Labor Relations Board (the Board) for Region 30 issued an order consolidating cases and consolidated complaint dated November 16. The consolidated complaint alleges that the Company, Mead Corporation d/b/a Escanaba Paper Company, violated Section 8(a)(1) of the National Labor Relations Act (the Act), by prohibiting its employees from wearing ''no scab'' buttons at its plant, by prohibiting its employees from having buttons, T-shirts, decals, or other items conveying messages which it finds objectionable for specified reasons, and by promulgating and maintaining progressive discipline, including termination, for violation of these prohibitions. The Company filed a timely answer denying that it had committed the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, manufactures and distributes at nonretail paper and related products at its mill in Esca-

[14] There is evidence that ''heated discussions'' took place between participants and non-participants, with both sides expressing strong opinions. But there is no evidence that these ''discussions'' ever resulted in physical confrontations. Moreover, employee complaints about other employees' display of Sec. 7 related items is not a sufficient basis on which to base a lawful ban on the items. See *Power Equipment Co.*, 135 NLRB 945, 965 (1962), enfd. in pertinent part 313 F.2d 438, 442–443 (6th Cir. 1963) (employee complaints about other employees' wearing union bowling shirts not sufficient to justify ban on shirts; ban violated Sec. 8(a)(1)).

[1] All dates are in 1990, unless otherwise indicated.

naba, Michigan. During the past calendar year, the Company, in the course and conduct of its business operations, sold and shipped goods and materials valued in excess of $50,000 directly to points outside the State of Michigan. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Company admits, and I find, that United Paperworkers International Union, its Locals 110 and 209 and International Brotherhood of Electrical Workers Local 979, are now, and have been at all times material, labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Company's Escanaba mill employs 1500 people to manufacture close to a half billion tons of paper annually. Approximately 1050 of these employees are represented by 1 of 4 unions. Local 110 represents the Company's 626 maintenance employees. Local 209 bargains collectively for the Company's 350 production employees. Local 979 represents the Company's electricians, numbering approximately 50. Teamsters Local 328 represents some of the Company's clerical employees and some employees in the finishing room, totaling between 25 and 30.

In late March 1989, Locals 110, 209, and Local 979 began negotiating with the Company for a new collective-bargaining agreement to cover its production and maintenance employees. In the course of the negotiations, Richard La Cosse, the Locals' chief spokesperson, asked Michael McDonald, the Company's chief spokesperson, what would happen if the employees engaged in a strike during the contract talks. McDonald replied that the Company had ''every intention of running this mill.'' A second company official took the occasion of an interview on a local TV station to state that the mill would continue to make paper in the event of a strike. The negotiations ended in late October 1989, and the Locals ratified the resulting agreements in the following month.

Throughout the negotiations, La Cosse wore a ''no-scab'' button. La Cosse's brother-in-law, maintenance employee, Tom Ugate, also wore a ''no-scab'' button at the mill, on the band of his hard hat, throughout the negotiations. In mid-September 1990, and until the Company ban, 50 to 60 employees wore ''no scab'' buttons at the Company's mill.

The Company and the Locals engaged in negotiations on an average of 2 days weekly, almost every week, between late March and October 1989. Among the Company's proposals, was a two-part flexibility program. Under Flex-I, the Company offered 50-cent hourly wage increases to the production employees if they would perform minor maintenance and repair, in addition to their normal production work. Maintenance employees would receive this same increase if they expanded their work to include additional maintenance tasks. Under Flex-II, craftsmen, who volunteered and qualified in one or two additional crafts, would receive a 50-cent hourly wage increment for each additional qualification. The Company would then employ these craftsmen in their secondary skills, as needed. The Locals and their constituents opposed the flexibility program in general, but were more vehement in their sentiment against Flex-II. This opposition delayed the conclusion of a collective-bargaining agreement.

On or about June 1, 1989, bargaining unit employees began wearing ''Just Say No—Mead'' buttons and ''Hey Mead-Flex This'' T-shirts, at the mill. The purpose of these items was to show the unity of the Locals in resisting a concessionary contract. When the ''Just Say No—Mead'' button first appeared, approximately 75 percent of the unit employees were wearing it. Employees continued to wear this button and the ''Hey Mead-Flex This'' shirt, at work, until the Company prohibited them in October. A T-shirt bearing the ''Just Say No—Mead'' message also appeared at the mill in June 1989, and continued to be worn by employees until the Company banned them in October.

In October 1989, the Company declared an impasse in negotiations and began implementing proposals it favored, including Flex I and II. The Company also withheld implementation of contract proposals sought by the Locals, including dues checkoff, union security, arbitration, grievance procedure, premium pay, and other wage improvements.

The Locals did not strike. Nor did they take a strike vote. Instead, the Locals held meetings throughout the negotiations, which the unit employees attended. The Locals explained the significance of the Company's contract proposals and discouraged the employees from striking. The Locals informed the employees that if they engaged in a strike, the Company could replace them permanently.

In the course of the Locals' meetings, Richard La Cosse, their bargaining spokesperson, told employees that they could show their displeasure toward the Company's contract proposals by wearing buttons, T-shirts, hats, and pins to pressure the Company into giving them a fair agreement. The Company's declaration of impasse and the implementation of its proposals provoked the wearing of buttons and T-shirts bearing the inscription ''Remember 89.'' Employee Joe Moberg, who is Local 209's vice president and chief steward, devised the ''Remember 89'' button in September 1989. Beginning in October 1989, employees at the Company's Escanaba plant began to wear these T-shirts and buttons to reflect their belief that the Company had imposed a contract on them.

On October 1, 1989, the Company charged employee Mike Wagner with sabotage, and disciplined him for that alleged misconduct by suspending him for 120 days. Local 110 considered Wagner to be one of the best operators at the mill. A grievance, pressed by Local 110 on Wagner's behalf, went to arbitration, resulting in reduction of his suspension to 60 days. However, the Company's action provoked the Locals to devise and issue buttons with the inscription ''Remember Wagner Oct. 1 1989.'' The Locals believed that the timing of the disciplinary action against Wagner was evidence of the Company's intent to pressure them into signing the proposed collective-bargaining agreement. Many employees wore the ''Remember Wagner'' button at the Company's mill, in 1989, and later, in 1990, to commemorate the Company's action against Wagner.

The Company's efforts in 1989, to obtain the contract it wanted, provoked the Locals into abandoning their participation in the Continuous Improvement program. The Locals and the Company had embarked on the joint ''CI'' program in 1985, to develop ways to improve the mill's production, safety, and work environment. The Locals' repudiation of the ''CI'' program was reflected in the appearance of buttons and T-shirts announcing that ''C.I. 1983–1989 is 'Dead,''' at the Company's mill.

In early 1990, and into the spring, the Company experienced an alarming drop in production. However, beginning in June, the Company's production improved to the point where it implemented its gainsharing program. Under the gainsharing program, the Company pays to its employees up to 5 percent of their W-2 income, each quarter, minus a holdback, if its productivity, quality, and cost effectiveness warrant such a payment. Productivity for the quarter ending September 30, was such that the Company made gainsharing payments to its employees for that period.

In June 1990, the Company began to recruit for its Flex-II program. In late September, the Company put Flex-II into effect. Toward the end of summer, according to Michael McDonald, the Company's assistant director of human resources: ''there was graffiti up, and a lot of buttons, and managers and employees were complaining of harassment and threats, tool boxes turned over, and tool boxes destroyed, and Lock Tight poured in locks.'' He also testified about sabotage to some oxyacetylene systems and management's concern about safety.

However, I find from employee Joe Moberg's testimony that the alleged sabotage to the oxyacetylene system, which occurred in June, consisted of an open valve on an acetylene gas tank, in the course of Flex team training. The Company soon took the precaution of putting the acetylene gas tanks in locked cages. There were no further incidents involving acetylene gas. The record did not show any connection between the open gas valve and employee hostility toward the Flex program.

I find from employee Michael Skorupski's and employee Bill Brower's testimony, that the tipping over of toolboxes, and other abuses of toolboxes, have occurred at the mill since they began working there, over 20 years ago. In any event, there was no showing that either the toolbox sabotage or the abuse of locks were attributable to the controversy involving the 1989 collective-bargaining agreement between the Locals and the Company, the Flex programs or to the appearance of any of the buttons or T-shirts discussed above.

McDonald also testified about the hostility between employees, who were opposed to Flex-II, and who labeled those who were joining the program as ''scabs.'' Indeed, the record shows that employees taped ''Flex II'' on to their ''no scab'' buttons. McDonald repeatedly used ''war'' to describe the atmosphere at the Company's mill in September. However, there was no showing of any fighting, disorderly conduct, interference with Flex training, production breakdown or disciplinary problems in or around the mill, growing out of the opposition to the Flex-II program, or resulting from the display of any of the buttons or T-shirts discussed above.

The Company offered six photographs as evidence of the provocative graffiti about which its witness, McDonald, testified. A Company security guard took the pictures in late September, at the mill. Two of the pictures show graffiti referring to the Flex-II participants as ''scabs'' and making obscene remarks about them. Of the remaining four photographs, one shows graffiti referring to Flex-II in an obscene manner, one refers to Flex-II participants as ''scabies,'' one asserts that the ''Union'' ''makes the choice for you in Flex II,'' and the fourth, shows ''scab'' inscribed on the door of a locker. This locker is used by a supervisor. Also, when the picture was taken, the ''scab'' inscription had been on its door for approximately 4 years.

The Company also introduced copies of the ''NO Bulletin,'' an underground publication circulated at its mill from time to time, designed to mimic the Company's ''Bulletin.'' Included in the ''NO Bulletin'' are critical and disrespectful comments about members of management and company policies. Supervisors are referred to as ''stupidvisors.'' The ''NO Bulletin'' refers to Wallace Goode, the Company's director of manufacturing operations, as ''Wally NoGoode.''

McDonald testified that the T-shirts and buttons worn by employees, which bore inscriptions such as ''Just Say No—Mead'' and ''Hey Mead—Flex This,'' were a source of embarrassment to the Company, when observed by suppliers, customers, and other visitors to the mill. In April or May, the Company disciplined an employee for flashing a T-shirt, which had ''Hey Mead—Flex This'' plus some ''derogatory gesture'' imprinted on it, at suppliers, who were visiting the mill. McDonald also testified that during the summer of 1990, some visitors ''were just kind of appalled at some of the things that people were wearing.'' He did not identify the items which had horrified the visitors.

On September 27 and 28, the Company notified the Locals that ''no scab'' buttons were prohibited at the mill. The Company's objected to this button because it had noted ''continuing references to Flex-II mechanics as scabs.'' In discussions with the Company's management, the Locals asserted that the ''no scab'' buttons were not directed at the Flex-II program. The Locals assured the Company that their members were wearing these buttons in reaction to the strike replacements at Greyhound, Eastern Airlines, and another employer. The Company remained convinced that Flex-II participants were the targets of the ''no scab'' buttons.

On October 2, the Company announced the following restrictions to its employees:

> Beginning on Monday, October 15, buttons, T-shirts, decals, etc. . . . that meet any of the following tests will not be allowed on the millsite:
>
> When the message conveyed is disrespectful and limits our ability to maintain discipline.
>
> 2. When the message is aimed at ''keeping the wounds from 1989 negotiations open.''
>
> 3. When the message leaves a negative impression on outsiders, particularly our customers/suppliers.

The letter announcing these restrictions, signed by Wallace H. Goode, the Company's director of manufacturing operations, closed with this paragraph:

> I am asking for your support. Negotiations have been over since November of 1989. There are buttons, T-shirts, etc. in the mill that meet one of the above three tests (No Mead, Remember Mike Wagner, Remember 89, and others). We sincerely believe they are disruptive to our environment, and keep people focused on the past and not on the future.

On October 12, the Company promulgated a progressive system of discipline, up to and including discharge, for violations of its restrictions on the wearing of T-shirts, buttons, and other items it deemed objectionable, at the mill. This system was to be effective on and after October 15.

B. *Analysis and Conclusions*

The General Counsel contends that the Company violated Section 8(a)(1) of the Act by prohibiting ''no scab'' buttons from being worn by its employees at the mill, by prohibiting the wearing of buttons, T-shirts, decals, and other items which it finds objectionable, as set forth in the rules issued on October 2, and by maintaining progressive discipline leading to discharge for violation of these unlawful rules. The Company urges dismissal of the complaint on the ground that its restrictions of buttons, T-shirts, decals and other items, and the imposition of discipline to enforce them, did not run afoul of the Act because they ''served legitimate concerns of maintaining discipline and harmonious employee-management relations at the Escanaba mill.'' In addition, the Company argues that the messages on some of the proscribed buttons and T-shirts were not protected by Section 7 and Section 8(a)(1) of the Act. (C.P. Br. p. 11).[2]

The Board has held that ''in the absence of special circumstances, employees have a Section 7 right under the Act to wear insignia at work referring to unions or other matters pertaining to working conditions for the purpose of mutual aid or protection.'' *Midstate Telephone Corp.*, 262 NLRB 1291, 1292 (1982), enf. denied in pertinent part 706 F.2d 401 (2d Cir. 1983). The Board has also accorded the Act's protection to employees when they used literature, such as cartoons (*Trover Clinic*, 280 NLRB 6 (1986)), or a monthly newspaper (*United Parcel Service*, 230 NLRB 1147 (1977)), to criticize conditions of employment, or to promote more favorable collective-bargaining results for themselves.

In *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507, 1511–1512 (1951),[3] the Board declared that Section 7 of the Act ''protects employees . . . when they . . . denounce their employer for his conduct of labor relations or affairs germane to the employment relationship.'' Further, the Board has recognized that ''employees have a legitimate interest in seeking to promote solidarity among their fellow employees with respect to matters of mutual concern, such as an economic strike to secure a favorable collective bargaining agreement.'' *Midstate Telephone Corp.*, supra at 1291. Extending the policy set out in *Midstate Telephone*, the Board, in *Southwestern Bell Telephone Co.*, 276 NLRB 1053, 1058 (1976), accorded the protection of Section 7 of the Act to employees, who after an economic strike, had posted Jack London's perjorative appraisal of nonstriking employees, entitled ''Definition of a Scab'' at the employer's plant, in an effort to strengthen employee support for future economic strikes.

However, the Supreme Court and the Board have limited employee conduct in support of Section 7 purposes. Thus, assuming that the Section 7 purpose has been shown, there is ''a further inquiry to determine whether [the employees'] concerted activities were carried on in such a manner as to come within the protection of Section 7.'' *NLRB v. Electrical Workers IBEW Local 1229*, supra. In making such determinations, the Board has adhered to the principle expressed by the Supreme Court in *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798 (1945), that the Board is charged with ''working out an adjustment between the undisputed right of self-organization assured to employees under [Section 7 of the Act] and the equally undisputed right of employers to maintain discipline in their establishments.'' Here, under settled Board policy, the Company had the burden of presenting substantial evidence of ''special circumstances'' such as interference with discipline, production and safety, to justify its restrictions on displays of buttons, wearing apparel and other items carrying messages pertaining to its employees' exercise of activities protected by Section 7 of the Act. *Government Employees*, 278 NLRB 378, 385 (1986).

The Board has found ''special circumstances'' and determined that an employer's right to maintain discipline outweighed the right of employees to wear shirts adorned with a message. In *Southwestern Bell Telephone Co.*, 200 NLRB 667 (1972), the Board permitted an employer to prohibit the wearing of shirts bearing ''an obscene epithet ridiculing management, where the profane nature of the message was deemed likely to interfere with the maintenance of decorum and discipline in the plant.'' *Midstate Telephone Corp.*, 262 NLRB 1291, 1292 (1982), enf. denied in pertinent part 706 F.2d 401 (2d Cir. 1983). The Board has also upheld an employer's ban on the wearing of pins designating certain employees as ''loyal'' strikers, where the employer showed that the display of such pins was likely to provoke fighting and name-calling at its plant. *United Aircraft Corp.*, 134 NLRB 1632, 1635 (1961). Other ''special circumstances'' permitting bans are, attacks on an employer's products or services (*NLRB v. Electrical Workers IBEW Local 1229*, supra), and malicious falsehoods (*National Steel Corp.*, 236 NLRB 1033 (1978)).

In the instant cases, the wearing of the buttons and T-shirts had legitimate, concerted purposes protected by Section 7 of the Act. The Locals and their adherents were seeking to bolster solidarity among the Company's employees, in the face of what they perceived to be a harsh contract and a provision which diminished employment opportunities. The ''Just Say No—Mead.'' the ''Remember Wagner Oct. 1 1989,'' the ''C.I. 1983–1989,'' and the ''Remember '89'' messages on T-shirts and buttons worn at the Company's mill, were clearly directed at encouraging solidarity in protest of the Company's bargaining policy.

The ''no scab'' buttons had two purposes, both protected by Section 7 of the Act. The first was to support strikers elsewhere. *Signal Oil & Gas Co.*, 160 NLRB 644, 649 (1966).

However, contrary to the Locals' assertions, I find from the employees' use of ''scabs'' to refer to volunteers for the Flex-II program, and the sudden appearance, at the mill, of approximately 50 ''no scab'' buttons, in September, when the program was reaching fruition, that the buttons were also directed at that program. This second purpose was to discourage employees from participating in a program which the locals and some employees perceived as a threat to their jobs. Thus, the wearing of these buttons was in the interest

[2] Sec. 7 of the Act provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8(a)(1) of the Act provides in pertinent part:

> It shall be an unfair labor practice for an employer-
>
> (1) to interfere with, restrain, or coerce employees on the exercise of the rights guaranteed in section 7.

[3] Affd. sub nom. *NLRB v. Electrical Workers IBEW Local 1229*, 346 U.S. 464 (1953).

of seeking mutual aid or protection to safeguard the jobs of the employees covered by the collective-bargaining agreement, and thus came within the protection of Section 7 of the Act. *Midstate Telephone Corp.*, 262 NLRB at 1292.

The ''Remember Wagner Oct. 1, 1989'' button reflected the perception of the Locals and the employees that the discipline inflicted on employee Wagner was part of the Company's effort to pressure them to accept the pending collective-bargaining agreement, which they considered to be too favorable toward the Company. The need for solidarity continued after the ratification of the collective-bargaining agreement, to encourage employees to remain out of the voluntary Flex-II program and to persuade the Company to soften its bargaining policy when negotiating for the next agreement with the Locals. That the messages on these buttons and T-shirts kept ''the wounds from 1989 negotiations open'' did not deprive them of the Act's protection. *Midstate Telephone Corp.*, supra. Nor did the possibility of ''a negative impression on outsiders, particularly . . . customers/suppliers'' provide the Company with ground for restricting the buttons, T-shirts and other items worn at the mill by its employees. *Borman's, Inc.*, 254 NLRB 1023, 1025 (1981), enf. denied 676 F.2d 1138 (6th Cir. 1982).

Unlike the shirt in *Southwestern Bell*, supra, the ''no scab'' button banned on September 27 and 28, and the buttons, and T-shirts proscribed by the Company in its letter of October 2, contained no obscene epithet ridiculing the Company or its management. The ''Just say No—Mead'' button may have offended the Company, but it did not encourage disrespect toward management, disregard of safety, or a slowdown in work.

Further, unlike *United Aircraft Corp.*, supra, there was no showing by substantial evidence that the controversy regarding the Flex-II program was likely to result in fighting, or any unusual outbursts of discord or bitterness between the Flex-II volunteers and the other employees, which might be encouraged by the appearance of the ''no scab'' buttons, T-shirts, or other items carrying that inscription, which the Company has banned. Nor was there any substantial evidence showing that any of the other buttons and T-shirts complaining of the Company's bargaining policy or of Mike Wagner's punishment might impair discipline, safety, or production at the Company's facility.

Finally, the Company has not shown any special circumstances which permitted it to impose the broad restrictions, which it promulgated on October 2. The tests set forth in that announcement clearly ran afoul of the Board's policies safeguarding the rights of employees to use buttons, T-shirts, decals, and other items to carrying messages pertaining to their activities protected under Section 7 of the Act.

In sum, I find that by banning the ''no scab'' buttons, by promulgating and maintaining the restrictions which it announced on October 2, and by promulgating and maintaining the progressive system of discipline for violations of those restrictions, which it announced on October 12, the Company interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Mead Corporation d/b/a Escanaba Paper Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Paperworkers International Union, its Locals 110 and 209, and International Brotherhood of Electrical Workers Local 979 are labor organizations within the meaning of Section 2(5) of the Act.

3. By prohibiting employees from wearing or displaying ''no scab'' buttons, other buttons, T-shirts, other articles of clothing, decals, or other items which carry messages pertaining to employees' exercise of activities protected under Section 7 of the Act, and by promulgating and maintaining progressive discipline leading to termination for violation of those prohibitions, the Company violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices effect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Mead Corporation d/b/a Escanaba Paper Company, Escanaba, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from wearing or displaying ''no scab'' buttons, T-shirts, other articles of clothing, decals, or other items which carry messages pertaining to employees' exercise of activities protected under Section 7 of the Act.

(b) Promulgating and maintaining progressive discipline leading to termination for violation of rules which prohibit employees from exercising activities protected under Section 7 of the Act.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Escanaba, Michigan, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

ceipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.